



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/752,652

01/07/2004

Barry G. Anderson

015005-9450-00

4091

23409 .7590 03/02/2007
MICHAEL BEST & FRIEDRICH, LLP
100 E WISCONSIN AVENUE
Suite 3300
MILWAUKEE, WI 53202

EXAMINER

ANDERSON, CATHARINE L

ART UNIT

PAPER NUMBER

3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
--	-----------	---------------

3 MONTHS

03/02/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/752,652	Applicant(s) ANDERSON ET AL.	
	Examiner C. Lynne Anderson	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Response to Amendment***

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Response to Arguments

Applicant's arguments, see the amendment after final, filed 7 February 2007, with respect to the rejection(s) of claim(s) 1-21 under 102(b) have been fully considered and are persuasive. The element shown in Figures 12 and 13 of Bemis as numeral 78 does not fulfill the claimed limitation of 'drainhead' since it is not coupled to the swingarm 484, nor is it able to engage the canister to enable fluid communication between the passageway and liquid contained in the canister.

Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Bemis, with the drainhead represented by numeral 492 in the figures. Drainhead 492 is coupled to the swingarm 484, as shown in figure 16, and couples to the canister, as shown in figure 17.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3761

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Bemis et al. (5,931,822).

With respect to claims 1 and 14-17, Bemis discloses a medical device for draining a suction canister 10, as shown in figure 1, having a cover 22 and a liner 14, the cover 22 having a port 320. A housing 400 has a swingarm 484 coupled thereto, the swing arm being movable between a first, or upper, position, and a second, or lower position, as shown in figure 16. A drainhead 492 has a passageway therein, and is movable between a first position and a second position, as shown in figure 16, the second position allowing access to the canister. A support member 464 on the swingarm 484 supports the canister, as shown in figure 16. A suction source drains fluid from the canister through the drainhead to a sewer, as disclosed in column 1, lines 59-62.

With respect to claims 2 and 3, the swingarm and the drainhead interlock, as shown in figure 17, and the swingarm is unable to move further.

With respect to claim 4, the support member 464 includes an alignment member comprising branched arms that surround the cover to align the canister relative to the drainhead, as shown in figure 16.

With respect to claim 5, a finger notch engages the cover with the canister, as shown in figure 9.

With respect to claim 6, the suction source is activated when the swingarm is in the second position, as disclosed in column 11, lines 34-38.

Art Unit: 3761

With respect to claim 7, the support member further includes a rigid walled container 416 into which the canister is capable of being positioned, as shown in figure 16.

With respect to claim 8, an air tight seal is created when the drainhead is in its second position in order to create a vacuum seal required to drain the canister, as disclosed in column 11, lines 34-38.

With respect to claim 9, the swingarm rotates on an axis of 180 degrees between its first and second positions, as shown in figure 16.

With respect to claims 10 and 11, the swingarm and drainhead interlock to fix the position of the swingarm relative to the drainhead, as shown in figure 17.

With respect to claim 12, the upper portion of the swingarm functions as a handle to allow one to grasp the swingarm during use.

With respect to claim 13, the suction source includes a jet pump 604.

With respect to claims 18-21, the method of use of the drainage device is described in column 11, lines 34-67.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ

Art Unit: 3761

619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 14-21 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 21-23 of U.S. Patent No. 6,626,877. Although the conflicting claims are not identical, they are not patentably distinct from each other because rotation of the apparatus by the swingarm to an upright position during drainage would be obvious to one of ordinary skill in the art to allow the apparatus to drain.

Claims 1-21 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/834,594. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims and the patented claims provide substantially identical structures and methods.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number

Art Unit: 3761

is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CNA
cla

February 26, 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

